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General Mills, Inc. et al v. Industrial Commission of Utah and Olgan Lassen Hansen : Reply Brief of Plaintiff

Utah Supreme Court

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In the Supreme Court of the State of Utah

GENERAL MILLS, INC., a corpora-
tion of the State of Delaware,
doing business under the trade
name of SPERRY FLOUR COM-
PANY, Western Division Gen-
eral Mills, Inc., and ZURICH
GENERAL ACCIDENT & LIABILITY
INSURANCE COMPANY, LTD.,

Plaintiffs,

vs.

INDUSTRIAL COMMISSION OF UTAH
and OLGA LASSEN HANSEN,

Defendants.

PLAINTIFF'S REPLY BRIEF

DEVINE, HOWELL & STINE,
NEIL R. OLMSTEAD, and
SHIRLEY P. JONES,

Attorney for Plaintiffs,
FILED

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In the Supreme Court of the State of Utah

GENERAL MILLS, INC., a corporation of the State of Delaware, doing business under the trade name of SPERRY FLOUR COMPANY, Western Division General Mills, Inc., and ZURICH GENERAL ACCIDENT & LIABILITY INSURANCE COMPANY, LTD.,

Plaintiffs,

vs.

INDUSTRIAL COMMISSION OF UTAH
and OLGA LASSEN HANSEN,

Defendants.

Case No. 6382

PLAINTIFF'S REPLY BRIEF

A short reply brief may be of some service to the court in this case.

In their brief defendants seem to place considerable reliance on the deposition of Mr. C. W. Stratton taken in Los Angeles, January 2, 1941, and heretofore referred to by us at 4 T. As we have pointed out, there is absolutely nothing in the deposition to indicate that

Mr. Hansen received any injury on March 17, 1938. On page 16 of the deposition the following occurs:

“Q. So far as you observed it, you noticed nothing?

A. That’s right.

Q. You noticed nothing physically wrong with him, such as cuts or gashes?

A. I noticed no cuts or blood or anything.

Q. When you came up to the car, he was seated in the seat?

A. Yes.

Q. He remained in the car and manipulated the car back on the highway and without getting out of the car, drove on?

A. Yes.”

Defendants further attempt to show that Mr. Hansen was something of a stoic, not subject to complaining, and that it was perfectly logical for him to continue on his way to Richfield and make no complaints to anyone of his injuries and continue with his business. Of course there is nothing in the record to support a contention that if he was injured, he would not have complained of it. In fact, when he went to see Dr. Root on March 23, as testified to by Dr. Root in the second hearing (2 T. 3), Dr. Root stated that Mr. Hansen was in great shock and that he didn’t see how a man in his condition could operate an automobile and conduct sales meetings and attend to business as a feed salesman, and yet the defendants’ own brief concedes that he drove

on to Richfield, held a meeting on the 17th, and the record is without dispute that he did not leave Richfield until three days later, continued to attend to his business without making complaints to anyone. Dr. Root further testified that he didn't know anything about any accident except as he got the information from Mr. Hansen (2 T. 12). The undisputed evidence is that he didn't go to the hospital after any accident on the 17th, but he did go to the hospital immediately upon his return home after the accident of March 20.

The deposition of Mr. Stratton shows that at the time the car skidded off the road on the 17th it was only going 20 or 25 miles per hour. There could have been no terrific impact. But Miss Peterson says that on the 20th the car that collided with them was going at a terrific rate of speed, that it damaged the fender, wheel, and running board and gave Mr. Hansen a terrible jolt and up to that time he had complained of no injuries, but immediately he complained of a terrible lump in his stomach and chest (2 T. 28, 29).

The defendants also try to show that Mr. Hansen was so wrapped up in his business that he would have gone on and attended to it regardless of anything. This likewise is not borne out by the record. Immediately upon his return home after the accident of the 20th, he went to the hospital and remained there for several months. He couldn't have been of such great value to the business because the manager, Mr. Thompson, at the first hearing testified that after Mr. Hansen got out of

the hospital, he tried to get back to work for the Sperry Flour at Ogden and was told that there was no chance of his getting back there and no chance of his getting on at all any place with the Sperry Flour Company (1 T. 31, 32).

Defendants cases fail to support their contentions, and, in fact, are all against them. It would seem needless to quote from the cases at length, since the court will undoubtedly become familiar with them. But as illustrative of how they fail to support the defendants, reference to a few of them may be of value. For instance, defendants quote from *Diaz v. Industrial Commission*, 80 Utah 77, at pages 94 and 95, 13 P. (2d) 307, to the effect that the report of injury is sufficient to show an accident in the course of employment. In the Diaz case, Diaz was working for the Tintic Standard Mining Company and in some manner received an injury, which it was claimed resulted in his death. The employer reported that he had been crushed between two cars. The Industrial Commission found that he had sustained an accident in the course of his employment but that the dependents were not dependents in law and therefore made an award to the State Insurance Fund. The quotation cited by the defendants in this case appearing on pages 94 and 95 of the Utah Reports was by Judge Straup. The remainder of the court, however, refused to concur with this and held that there was no evidence of an accident in the course of his employment. The award was annulled. In this present case the court has held upon the former hearing that the employer's report

of injury made by mistake and upon information furnished by the deceased was incompetent. Even in Judge Straup's opinion in the Diaz case he states that the declarations of the employee are incompetent unless they are against interest.

The case of *Burgener v. Industrial Commission*, 97 Utah 15, 89 Pac. (2d) 241, cited by the defendants is likewise against them. In that case compensation was denied because there was no connection between the admitted injury and the death.

In the case of *Bingham Mines Co. v. Allsop*, 59 Utah 306, 203 P. 644, this court held there was no other conclusion that could be reached than that the deceased had suffered an accident in the course of his employment.

In *Wilson v. Industrial Commission*, 99 Utah 524, 108 P. (2d) 519, the applicants were likewise denied compensation because the evidence did not connect the accident up with the death.

And in *Aetna Life Insurance Co. v. Industrial Commission*, 64 Utah 415, 231 P. 442, this court expressly held that an award of the Commission could not be sustained unless supported by competent evidence and set the award aside.

The court will find that the remainder of the defendants' cases instead of sustaining them, are against them and hold that an award of the Commission can not be based upon mere conjecture.

So, we again submit that even if there were proof of injuries on March 17, which there is not, there is no proof that any such injuries caused the death of Mr. Hansen and that all the probabilities are that the terrific jolt he received on the 20th when not in the course of his employment was the contributing factor, if there was a contributing factor, in his death.

We, therefore, again respectfully submit that the order of the Commission should be annulled.

Respectfully submitted,

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NEIL R. OLMSTEAD, and
SHIRLEY P. JONES,

Attorneys for Plaintiffs,